ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

June 16, 1933

The National Industrial Recovery Act

H. R. 5755

CAUTION IN FILING CODES SUGGESTED

THE above measure entitled "To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes" passed Congress on June 13, 1933, and was signed by the President today. We are submitting a complete copy of the Act herewith.

This new law provides three principal devices for the accomplishment of its purposes:—

1. Voluntary "Codes of Fair Competition."
2. Involuntary "Codes of Fair Competition."
3. Agreements between those affected.

In the case of each of these three devices, the Code or Agreement must contain everything that the President or his Agents wish,—and nothing that they do not wish.

In the case of each of these three devices, the Code or Agreement must contain —whether the President or his Agents wish it or not—the labor union provisions of Section 7-a of the Law. These are:—

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

"(2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union

or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

"(3) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

Once a Code of Fair Competition, voluntary or involuntary, is established for a trade or industry or a subdivision thereof, it becomes "the standard of fair competition for such trade or industry or subdivision thereof"—and its violation by anyone in that trade, industry or subdivision thereof, makes the violator subject to penalties and to restraint by injunction.

A trade, industry or subdivision thereof, is not subject to such Codes of Fair Competition or Agreements unless and until it has voluntarily submitted a Code of Fair Competition, or has voluntarily entered into an Agreement,—or unless it has been subjected to an involuntary Code of Fair Competition.

A trade, industry or subdivision thereof, will only be subjected to an involuntary Code of Fair Competition if:

"Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof * * *."

Even then an involuntary Code of Fair Competition may only be prescribed by the President or his Agents "after such public notice and hearing" as the President or his Agents shall specify.

There is a provision for licensing business enterprises — at the discretion of the President or his Agents—in order to make effective Codes of Fair Competition, Agreements, or the policy of the Law, after notice and hearing, whenever the President or his Agents find destructive price-cutting or wage cutting, or other activities contrary to the policy of the Law,—and in such a case, no one unlicensed may engage in interstate or foreign commerce in the line of business affected.

The President may delegate his authority under the Law to anyone he sees fit to delegate it to.

The above are the principal features of the Law.

It is our opinion that there are not necessarily any advantages to be gained by any trade or industry, its employes or the general public by the voluntary submission of said trade or industry of any Code of Fair Competition or Agreement under this Law,—unless there are prevalent in that trade, industry or subdivision thereof, abuses inimical to the public interest and contrary to the policy of this Law.

Even in such a case, we believe that every effort should be made within the trade, industry or subdivision thereof, to abolish such abuses quickly and effectively by coop-

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erative action. The adoption of a Code of Fair Competition or Agreement under this new Law should be only a last resort.

In our opinion there are great disadvantages involved in becoming subject voluntarily or involuntarily to the operation of such Codes of Fair Competition or Agreements.

Industrial concerns should be most cautious with respect to committing themselves or allowing others to commit their trade, industry or subdivision thereof, to such Codes of Fair Competition or Agreements.

If a Code of Fair Competition is adopted and approved, the whole of the trade, industry or subdivision thereof, to which it applies, is automatically committed to the Code of Fair Competition,—including every individual concern in that trade, industry or subdivision thereof—whether it agreed to the Code of Fair Competition or not.

We believe that there is nothing to be gained, and a great deal to be lost, by permitting your industry, trade or subdivision thereof, to be rushed in under a Code of Fair Competition or Agreement under this Law. Your trade, industry or subdivision thereof, can always get in.

But once your trade, industry or subdivision thereof, is in,—your concern is in until two years from the time the Law was adopted—at the end of which time the Law, by its own terms, ceases to operate.

Great caution should be exercised in the choice of existing trade groups with which to become identified as well as in the choice of those who are to lead any new trade group that may be organized.

We suggest the following as possibilities that may arise from permitting the trade, industry or subdivision thereof, within which you fall, to subject itself to a Code of Fair Competition or Agreement under this Law: —

1. The labor union provisions of Section 7-a which are required to be a part of any Code of Fair Competition or of any Agreement under the Law, would deprive you of all means of protecting your business and your employes from the activities of union labor organizers.

2. You would be subjected to the requirement that you be subject to such maximum hours of labor, minimum rates of pay, and "other conditions of employment" as the Code of Fair Competition or Agreement may be required to contain by the President or his Agents.

3. You may be subjected under such a Code of Fair Competition or Agreement to the operation of your business in such a way as to help carry those in the industry who are less able and less efficient than yourself. It must be remembered that while you may be weaker than some others, there may be many others who are weaker than you are, and you may suffer through the leavening process.

4. You may be subjected to the foregoing burdens while your competitors, engaged only in intrastate business, may be free from these burdens.

There has been great activity and great pressure in many trades, industries and subdivisions thereof, to immediately "organize" and to be among the first to "take advantage" of this Law.

We recommend the utmost care and caution—not only with respect to what you do, but with respect to what you permit to be done by the trade, industry or subdivision thereof, into which you may be classified.

We are informed that the immediate purpose of the administration is to have the basic industries (Iron and Steel, Automobile, Coal, Oil and Textiles) file codes under this Law. After these major groups have determined upon such course of action as may seem desirable there will be ample time for the other industries to formulate their program. Moreover the experience of these basic industries will be extremely beneficial to others in determining their plans.

We believe that the failure of business institutions to act advisedly and cautiously in these matters will only result in confusion and in the creation of a situation that will retard rather than facilitate the accomplishment of the primary objectives of the National Industrial Recovery Act.

Representatives of the Illinois Manufacturers' Association have spent considerable time in Washington in connection with this legislation. Our Counsel has made a careful study of the provisions of the Act. We shall keep our members informed of all developments in connection with this subject affecting their interests. We are prepared to supply you with information and advice in this situation.

JAMES L. DONNELLY,
Executive Vice-President.

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ILLINOIS MANUFACTURERS' ASSOCIATION
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June 24, 1933

The National Industrial Recovery Act

Bulletin No. 2

Under date of June 16th, we directed a bulletin to our members on the above subject entitled "Caution in Filing Codes Suggested." Pursuant to the statement in that bulletin that we would keep our members informed of all developments in connection with the National Industrial Recovery Act affecting their interests, we submit herewith the following excerpts from Bulletin No. 2 issued by the National Industrial Recovery Act Administrator:

"(2) The National Recovery Administration will receive proposed codes at any time after this date at its office in the Department of Commerce Building, Washington, D. C. * * * Consistent with the President's statement, the major industries will so far as practical have the first attention of the Administrator.

As soon as the proposed code is put in proper form, after consultation with those submitting it, DUE PUBLIC NOTICE WILL BE GIVEN OF A DATE FOR A HEARING ON THE CODE, AND AT SUCH HEARING A REASONABLE OPPORTUNITY TO BE HEARD WILL BE GIVEN TO ALL INTERESTED PARTIES, INCLUDING ALL AFFECTED LABOR GROUPS, AND REPRESENTATIVES OF CONSUMER ORGANIZATIONS, THE TRADE ASSOCIATIONS OR GROUPS SUBMITTING CODES AND ANY ESSENTIAL MINORITY THEREOF, OTHER CONCERNS NOT MEMBERS THEREOF, AND PERSONS ENGAGED IN OTHER STEPS OF THE ECONOMIC PROCESS WHOSE SERVICE AND WELFARE MIGHT BE AFFECTED BY THE APPROVAL OF THE PROPOSED CODE. * * *

(3) After such a hearing the proposed code may be modified at the suggestion of the Administration or otherwise and as so modified, if it is agreed to by representatives of the association or group presenting it and ratified by such association or group under such conditions as the Administration may prescribe, it will be presented to the President for his approval or disapproval or suggested modification, and when finally approved by the President, it shall have the effect prescribed by the National Industrial Recovery Act.

(5) The Act requires that certain provisions found in subsection (a) of Section 7 shall be included in every code and therefore no application for the approval of any basic code will be received which omits OR MODIFIES these mandatory provisions, which are as follows:

EVERY CODE OF FAIR COMPETITION, AGREEMENT, and LICENSE APPROVED, PRESCRIBED, OR ISSUED under this title SHALL contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their

agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, maximum machine-load of employees, and other conditions of employment, approved or prescribed by the President.

(6) IT IS NOT THE FUNCTION OF THE NATIONAL RECOVERY ADMINISTRATION TO PRESCRIBE WHAT SHALL BE IN THE CODES TO BE SUBMITTED BY ASSOCIATIONS OR GROUPS. THE INITIATIVE IN ALL SUCH MATTERS IS EXPECTED TO COME FROM WITHIN THE INDUSTRY ITSELF. NEITHER IS IT THE PURPOSE OF THE ADMINISTRATION TO COMPEL THE ORGANIZATION OF EITHER INDUSTRY OR LABOR.

* * *

(7) * * * (d) The following principle emphasized in the President's statement should be recognized and adhered to:

> I am fully aware that wage increases will eventually raise costs, but I ask that managements give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. That is good economics and good business. The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity. If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. WE CANNOT HOPE FOR THE FULL EFFECT OF THIS PLAN UNLESS, IN THESE FIRST CRITICAL MONTHS, AND, EVEN AT THE EXPENSE OF FULL INITIAL PROFITS, WE DEFER PRICE INCREASES AS LONG AS POSSIBLE.

* * *

(8) At the hearings described in paragraph (2) every trade association or group proposing a code should be prepared to establish by evidence the requirements of section 3 (a), clause 1, of the act which provides:

> that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative to such trades or industries or subdivisions thereof.

and of section 3 (a), clause 2, of the act which provides:

> that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title.

(9) It is the purpose of the act to encourage a voluntary submission of codes of fair competition and the procedure offered by these provisions for basic codes is intended to simplify and expedite this process. But in the event that codes of fair competition are not voluntarily submitted, attention is invited to other pertinent provisions of the act. It is provided in section 3 (d) of the act that the President upon his own motion or if complaint is made, may after public notice and hearing prescribe a code of fair competition for a trade or industry or subdivision thereof. Section 3 (d) reads as follows:

> Upon his own motion, or if complaint is made to the President that ABUSES INIMICAL TO THE PUBLIC INTEREST AND CONTRARY TO THE POLICY HEREIN DECLARED ARE PREVALENT in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, MAY prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

In this same connection, attention should be directed to the requirements of sections 7 (b) and (c), which read as follows:

> The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, maximum machine-load of employees, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.
>
> (c) Where no such mutual agreement has been approved by the President he MAY investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds ADVISABLE, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be NECESSARY TO EFFECTUATE THE POLICY OF THIS TITLE, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.
>
> Under the foregoing provisions of the act if no code or agreement establishing standards as to maximum hours of labor, minimum rates of pay, and conditions of employment has been approved by the President, the President is authorized under the foregoing section 7 (c) to prescribe a limited code upon the basis of such investigations and after such hearings as he finds advisable."

It is submitted that the following inferences may be drawn from this bulletin:

1: That unless codes are submitted upon the initiative of associations or groups, or unless abuses make necessary the initiative of the Administration, it is not the purpose of the Administration to force industries under codes.

2: That price raising provisions in codes submitted at this time will not be approved.

3: That a reasonable opportunity to be heard will be given everyone who would be affected by the operation of a code prior to its adoption.

4: That no code will be approved which omits or in anywise modifies the mandatory provisions of Section 7-a.

5: That any industry, trade or subdivision thereof, in which the prevalence of abuses is permitted to exist and continue, will be subjected to compulsory submission to a code prepared by the Administration.

CAUTION IN FILING CODES AGAIN SUGGESTED

In our bulletin of June 16th we stated that any industry which had subjected itself to a code of fair competition or agreement under this Law must necessarily conform to the provisions of Section 7-a thereof; that such provision would deprive industries which were a party to such code of ALL means of protecting their business and their employes from the activities of union labor organizers; that we were informed that it was the immediate purpose of the Administration to

have the basic industries (iron and steel, automobile, coal, oil and textiles) file codes under this Law; that we recommended that other industries defer the final filing of codes until the experience of said basic groups in filing codes was available; that we were informed that there was great activity and great pressure being brought to bear by various individuals and organizations to influence trade groups to be among the first to "take advantage" of the Law; that we recommended the utmost care and caution not only with respect to what you do, but with respect to what you permit to be done by the trade, industry or subdivision thereof in which you may be classified; that there were not necessarily any advantages to be gained by any trade or industry, its employes or the general public by the voluntary adoption by said trade or industry of a Code of Fair Competition or Agreement under this Law UNLESS THERE ARE PREVALENT IN THAT TRADE, INDUSTRY OR SUBDIVISION THEREOF, ABUSES INIMICAL TO THE PUBLIC INTEREST AND CONTRARY TO THE POLICY OF THIS LAW; that even in such case every effort should be made within the trade, industry or subdivision thereof to abolish such abuses quickly and effectively by cooperative action; that the adoption of a Code of Fair Competition under this new law should be only A LAST RESORT, and that in our opinion the failure of business institutions to act advisedly and cautiously would result in confusion and dislocation in their industry which would retard rather than facilitate the accomplishment of the primary objectives of the National Industrial Recovery Act.

At a meeting of the National Industrial Council (an organization consisting of the executives of all state manufacturers associations) held at the Edgewater Beach Hotel, Chicago, on Monday, June 19th, the following resolution was unanimously adopted:

> RESOLVED, That the associations of state manufacturers and industrial organizations constituting the National Industrial Council recommend to their constituent members more than ordinary caution in filing codes and agreeing to selling prices until such time, as a result of diligent study of the Act, the most satisfactory, safe and workable code for industry can be worked out.

We cannot too strongly emphasize the suggestion of caution and care embodied in our bulletin of June 16th as well as in the resolution just quoted.

We shall undertake to keep our members constantly informed of all developments in connection with this subject affecting their interests with relation particularly to employment problems. We are prepared to supply you with information and advice in this situation.

JAMES L. DONNELLY,
Executive Vice-President

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July 17, 1933

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National Industrial Recovery Act

Bulletin No. 4

Information received from our members throughout the state indicates that agents of organized labor are making an aggressive effort to use the National Industrial Recovery Act as a means to secure new members and to unionize Illinois industry. This activity is apparently being carried on pursuant to the unionization program of the American Federation of Labor as announced in a letter and bulletin issued by William Green, President of the American Federation of Labor, under date of June 17th. The following extracts from Mr. Green's letter are informative (the letter was addressed to "National and International Unions, State Federations of Labor, City Central Bodies and Organizers)":

"I enclose a copy of an appeal which is addressed to unorganized workers, urging them to organize for the purpose of securing all the rights and benefits to which they are entitled under the operation of the National Industrial Recovery Act.

"One of the definite purposes of the National Industrial Recovery Act is to increase wages and reduce the hours of work and overcome unemployment. Labor cannot expect, and should not expect that these benefits will be conferred upon them; if they are to be realized, Labor must unite, organize and collectively bargain.

"National and International Unions, State Federations of Labor, City Central Bodies and Local organizations affiliated with the American Federation of Labor must acquaint the unorganized with their rights under the National Industrial Recovery Act.

"The American Federation of Labor must be the voice of Labor.

"WE PROPOSE TO MAKE SPECIAL DRIVES IN MASS PRODUCTION INDUSTRIES AND IN MAKING THE DRIVE FOR ORGANIZING THE UNORGANIZED IN ALL CITIES AND TOWNS OF THE COUNTRY, WE URGE THAT COOPERATION AND ASSISTANCE BE GIVEN BY ALL ORGANIZED GROUPS AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR."

Pertinent extracts from the bulletin, which is entitled "Attention! Wage Earners and Salaried Workers Everywhere," are:

"DO YOU WANT HIGHER WAGES, SHORTER HOURS, AND IMPROVED CONDITIONS OF EMPLOYMENT, AND ARE YOU WILLING TO ORGANIZE IN ORDER TO SECURE THESE BENEFITS?

"THE GOVERNMENT OF THE UNITED STATES HAS ESTABLISHED YOUR LEGAL RIGHT TO ORGANIZE!

"NO EMPLOYER AND NO CORPORATION CAN, WITHOUT VIOLATING THE LAW, INTERFERE IN THE EXERCISE OF THE WORKERS' RIGHT TO ORGANIZE AND TO BARGAIN COLLECTIVELY THROUGH REPRESENTATIVES OF THEIR OWN CHOOSING!

"The hour has arrived when Labor can be free, free to organize. Congress has established your legal right to organize. Workers everywhere should avail themselves of the opportunity thus presented.

"THE NATIONAL INDUSTRIAL RECOVERY ACT WILL MEAN MUCH TO YOU AND YOUR FAMILIES IF YOU ORGANIZE INTO BONA FIDE TRADE UNIONS. IT WILL MEAN LITTLE IF YOU FAIL TO DO SO.

"In the name of Organized Labor I appeal to all classes of workers to act quickly, to organize immediately, to realize all the benefits and rights to which you are entitled through organization under the provisions of the National Industrial Recovery Act.

"The American Federation of Labor will assist you, will cooperate with you and will make it possible for you to be identified with bona fide, independent trade unions affiliated with the American Federation of Labor."

With the purpose of developing information which might be helpful to our members in counteracting the impression which labor leaders are endeavoring to give to workers throughout the country to the effect that the only way labor can secure benefits under the Act is to join a labor union, President Thomas S. Hammond, Vice-President Wantz and the signer have spent several days in Washington. As a result of our observations there, we submit the following recommendations:

(1) THAT ANY TRADE GROUP WHICH ELECTS TO FILE A "CODE OF FAIR COMPETITION" INCORPORATE IN SUCH CODE IMMEDIATELY AFTER THE PROVISIONS OF SECTION 7a, THE FOLLOWING PARAGRAPHS:

(a) It is clearly understood that nothing in this Code shall impair in any particular the Constitutional rights of the employer to protect his business and property from the unlawful activities of others.

(b) It is clearly understood that nothing in this Code shall impair in any particular the Constitutional rights of the employee and employer to bargain individually or collectively as may be mutually satisfactory to them; nor impair the joint right of employee and employer to operate an open shop.

(c) Nothing in this Code is to impair the Constitutional rights of employers to freedom in the selection, retention and advancement of employes.

(d) Nothing in this Code shall authorize any change in the maximum hours of labor, minimum rates of pay, or other conditions of employment specified in this Code, without the agreement of a truly representative association or group of the trade or industry, or subdivision thereof, to which this Code applies.

Subjoined is an opinion from our Counsel, Fyffe and Clarke, which explains the purpose of and justification for the inclusion of the above paragraphs in the "Code of Fair Competition." While we have no assurance that "Codes of Fair Competition" containing the above clauses will be finally approved by the Administration, we believe that their inclusion is entirely warranted and highly desirable. As indicated in the opinion of our Counsel these paragraphs are not designed to change or modify the provisions of Section 7a of the Act when construed in the light of the decisions of the Supreme Court.

(2) THAT OUR MEMBERS WHOSE EMPLOYEES ARE BEING APPROACHED BY AGENTS OF ORGANIZED LABOR CONSIDER THE PROPRIETY OF PLACING BULLETINS ON THEIR BULLETIN BOARDS BASED UPON THE STATEMENT ISSUED BY GENERAL HUGH S. JOHNSON, ADMINISTRATOR OF THE NATIONAL INDUSTRIAL RECOVERY ACT, ON JULY 7th, 1933. SAID STATEMENT READ IN PART AS FOLLOWS:

"Circulars and other literature purporting to come from labor union agents have intimated or openly stated that it is a purpose of the National Recovery Act and Administration to unionize labor or that the only way labor can secure benefits under that Act is to join this or that union.

"Similar statements purporting to come from industrial concerns have intimated that this or that newly formed company union is the only organization through which labor can get a fair deal under this Act.

"Both statements are incorrect and such erroneous statements of the Act and its Administration tend to foment misunderstanding and discord.

"It is the duty of this Administration to see that all labor—organized as well as unorganized—gets a square deal, and the Administration is organized to do and will do that duty. The improved labor conditions proposed in the textile industry, which is largely unorganized, are an example of this. It is not the duty of the Administration to act as an agent to unionize labor in any industry and, as has repeatedly been stated, it will not so act."

General Johnson further said in that statement:

"Manifestly the purpose of the Act is to create and preserve harmonious relationships and to prevent industrial strife and class conflicts."

(3) THAT OUR MEMBERS, AND PARTICULARLY THOSE WHOSE EMPLOYES HAVE BEEN APPROACHED BY ORGANIZED LABOR AGENTS, HOLD MEETINGS OF THEIR KEY EMPLOYES AND ACQUAINT THEM WITH THE RIGHTS AND PRIVILEGES OF WORKERS UNDER THE NATIONAL INDUSTRIAL RECOVERY ACT.

In such conferences the fact should be emphasized that it is not necessary for employes to join a labor union in order to secure benefits available to them under the Act, and that the Act does not destroy the constitutional right to operate an open shop.

(4) THAT OUR MEMBERS AND TRADE GROUPS WITH WHICH THEY MAY BE IDENTIFIED COMMUNICATE TO PRESIDENT ROOSEVELT THEIR OPINIONS AS TO THE DESIRABILITY OF

HIS ISSUING A PUBLIC PROCLAMATION APPEALING TO ALL CONCERNED TO DISCONTINUE THE USE OF THE NATIONAL INDUSTRIAL RECOVERY ACT AS AN INSTRUMENT OF DISTURBING EXISTING RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES.

The National Industrial Recovery Act was enacted as a temporary **emergency** measure. President Roosevelt has on many occasions indicated that the present emergency is comparable with that which existed during the World War and that all economic groups should during the period of such emergency patriotically subordinate selfish interests to the common good.

During the World War, the Federal Government through the National Council of Defense, issued the following proclamation:

> "Neither employers and employees in private industries and transportation systems should attempt to take advantage of existing abnormal conditions and the country's necessities, to change existing labor standards in employment relations which they were unable to change under normal conditions."

It is entirely obvious that unless the efforts of organized labor to utilize the National Industrial Recovery Act as a means for unionizing American industry are promptly discontinued that wide-spread dislocation and disturbance may result which will largely, if not entirely, defeat the benefits that may be expected to result from the commercial features of the National Industrial Recovery Act.

The Illinois Manufacturers' Association has appealed to the President to issue such a proclamation.

Our members are requested to keep us informed of the activities of organized labor agents in their locality.

We also suggest that our members, who may elect to file codes, consider with their trade groups the desirability of limiting the period during which the code is effective to four months.

We shall undertake to keep our members informed of developments in connection with the National Industrial Recovery Act.

JAMES L. DONNELLY,
Executive Vice-President.

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July 14, 1933

Mr. James L. Donnelly, Executive Vice-President,
Illinois Manufacturers' Association,
Chicago, Illinois.

Dear Sir:—

You have asked that we give you our opinion with respect to the provisions of Section 7-(a) of the National Industrial Recovery Act which the Act provides must be contained in every Code of Fair Competition, Agreement and License, approved, prescribed or issued under the Act.

These provisions are:—

> "(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

In quoting these provisions, we have underlined certain words and phrases to bring out what are, in our opinion, particular provisions that call for clarification in Codes of Fair Competition submitted for approval by industries or trades, in order that the industries or trades submitting Codes may know what they are agreeing to.

In our opinion, in order to hold these provisions valid, it would be necessary for the courts to avoid placing a literal construction upon them.

For example: To construe sub-paragraph (1) as enjoining employers from interference or restraint with regard to any concerted activities of employes calculated by the employes to further their purposes of collective bargaining or other mutual aid or protection, would be to deprive employers of their lawful right to protect their properties from unreasonable activities of employes.

For example: It is held (see Truax v. Corrigan, 257 U. S. 321), that an employer's business is a property right, and that free access for employes, owners and customers to his business is incident to

such right; that intentional injury caused to either right by a conspiracy is a tort, and that concert of action is a conspiracy if its object is unlawful or if the means used are unlawful.

So, we would expect that the provisions of sub-paragraph (1) would be construed by the courts, —not literally,—but in the light of the existing law as to the legal right of the employer to protect his property.

Again, if sub-paragraph (2) were literally construed to mean that an employer is thereby enjoined from making the labor union affiliations or the labor union activities of employes a determining factor in the employment or retention of such employes, this sub-paragraph would, in our opinion, be invalid.

We have in mind that a statute may be valid which prohibits employers from interference, restraint or coercion of employes in the designation of their representatives, or in self-organization. (See— Texas & N. O. R. Co. v. Ry. Clerks, 281 U. S. 548).

But, in our opinion, the language of Adair v. United States, 208 U. S. 161, continues to be a correct statement of the law. There the court held:—

> "It was the legal right of the defendant, Adair,—however unwise such a course might have been—to discharge Coppage (the employe in that case) because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars, the employer and the employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

So, again, if the provisions of sub-paragraph (3) were literally construed to mean that the President or his agents would have the power, without the consent of the employer, to prescribe, from time to time, the maximum hours of labor, minimum rates of pay, and other conditions of employment in the employer's business, in our opinion, the provisions of this sub-paragraph would be invalid as depriving the employer of his business and property without due process of law.

So, it appears to us that the courts would construe the provisions of these three sub-paragraphs, which we have underlined, not literally, but in the light of the existing decisions of the courts in regard to the Constitutional rights of employers.

However, it is the purpose of the National Industrial Recovery Act and of those charged with its Administration that it shall be immediately operative and effective in order to meet the emergency which it was adopted to meet. This being so, the construction to be placed upon the Act cannot await the processes of the courts. It is necessary that those charged with the Administration of the Act accept the responsibility of construing its provisions and proceed in their administration of the Act upon the basis of such construction as they place upon its provisions.

It seems to us that industries and trades affected by Codes of Fair Competition under the Act may reasonably expect that the construction to be placed upon the provisions of Section 7-(a) of the Act that are required to be included in those Codes, follow the existing decisions of the United States Supreme Court as to the Constitutional rights of employers in the matters involved.

With this in mind, we feel that it is only reasonable to request and to expect that Codes of Fair Competition submitted by trades and industries and approved by the Administration, contain a statement of the construction to be placed upon the provisions of Section 7-(a) of the Act that are required to be part of each Code. Such a statement may be substantially as follows:

> "(a) It is clearly understood that nothing in this Code shall impair in any particular the Constitutional rights of the employer to protect his business and property from the unlawful activities of others.
>
> "(b) It is clearly understood that nothing in this Code shall impair in any particular the Constitutional rights of the employee and employer to bargain individually or collectively as may be mutually satisfactory to them; nor impair the joint right of employee and employer to operate an open shop.
>
> "(c) Nothing in this Code is to impair the Constitutional rights of employers to freedom in the selection, retention and advancement of employes.
>
> "(d) Nothing in this Code shall authorize any change in the maximum hours of labor, minimum rates of pay, or other conditions of employment specified in this Code, without the agreement of a truly representative association or group of the trade or industry, or subdivision thereof, to which this Code applies."

In our opinion, the approval of such provisions as a part of Codes submitted to the Administration for approval, will have an important effect in clarifying and facilitating the successful administration of the National Industrial Recovery Act without in any way changing or modifying the provisions of Section 7-(a) of the Act, properly construed in the light of the existing decisions of the Supreme Court of the United States.

Yours very truly,

(Signed) FYFFE & CLARKE.

ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

July 26, 1933.

National Industrial Recovery Act

Bulletin No. 5

Blanket Code for All Industries

We submit herewith the text of the "President's Re-Employment Agreement." We are informed that copies of this agreement together with a copy of President Roosevelt's proclamation calling for immediate execution of the agreement are now being mailed to employers throughout the United States. You will note that the last sentence of Section 14 reads as follows:

> "This agreement is entered into pursuant to Section 4 (a) of the National Industrial Recovery Act, subject to all the terms and conditions required by Sections 7 (a) and 10 (b) of that Act."

In other words, an employer entering into the "President's Re-Employment Agreement" would agree to the terms of Section 7 (a) of the National Industrial Recovery Act. Said Section 7 (a) provides as follows:

> Sec. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition

of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

As we have indicated in previous bulletins (see our bulletins of June 16th, June 24th and July 17th) we believe that the provisions of Section 7 (a) of the National Industrial Recovery Act if literally construed would deprive industries of their means of protecting their business and their employees from the unwarranted activities of union labor organizers.

We believe that anyone who is asked to agree to the provisions of Section 7 (a) of the National Industrial Recovery Act is warranted in expecting that there shall be incorporated in that agreement clauses with respect to the construction and meaning of the provisions of said Section 7 (a) which guarantee to him that his agreement in that respect will be so construed as to preserve his Constitutional rights with regard to the relations between employer and employee.

We accordingly recommend that members who may elect to sign the "Re-Employment Agreement" insert at the end of Paragraph 14 the following clause which has been prepared by our Counsel, Fyffe and Clarke:

> "Provided, the provisions of said Section 7 (a) shall not be construed to impair any Constitutional rights of the undersigned."

We believe that the inclusion of this provision in the "President's Re-Employment Agreement" will assist in avoiding the dislocation and disturbance which may follow labor strife and will thereby facilitate the accomplishment of what we understand to be the major objectives of the National Industrial Recovery Act, namely, stimulation of employment and increasing purchasing capacity.

The Association has received many inquiries from members regarding the construction to be placed upon various provisions of the "President's Re-Employment Agreement." Mr. Ray Wantz, President of the Rockford Fibre Container Company and Vice-President of the Association, and the signer are spending several days in Washington this week with the purpose of securing information which will assist us in answering these inquiries. We accordingly propose to supply our members additional information at an early date which we hope may be helpful to them in formulating their policy with reference to the "President's Re-Employment Agreement."

JAMES L. DONNELLY,
Executive Vice-President.

"President's Re-Employment Agreement"

The Agreement Set Forth.

The President's re-employment agreement, authorized by Section 4A, National Recovery Act, is as follows:

"During the period of the President's emergency re-employment drive, that is to say from August 1 to December 31, 1933, or to any earlier date of approval of a code of fair competition to which he is subject, the undersigned hereby agrees with the President as follows:

"1. After Aug. 31, 1933, not to employ any person under 16 years of age, except that persons between 14 and 16 may be employed (but not in manufacturing or mechanical industries) for not to exceed 3 hours per day and those hours between 7 a. m. and 7 p. m., in such work as will not interfere with hours of day school.

"2. Not to work any accounting, clerical, banking, office, service, or sales employes (except outside salesmen) in any store, office, department, establishment, or public utility, or on any automotive or horse drawn passenger, express, delivery, or freight service, or in any other place or manner, for more than 40 hours in any one week and not to reduce the hours of any store or service operation to below 52 hours in any one week, unless such hours were less than 52 hours per week before July 1, 1933, and in the latter case not to reduce such hours at all.

"3. Not to employ any factory or mechanical worker or artisan more than a maximum week of 35 hours until December 31, 1933, but with the right to work a maximum week of 40 hours for any 6 weeks within this period; and not to employ any worker more than 8 hours in any one day.

"4. The maximum hours fixed in the foregoing paragraphs 2 and 3 shall not apply to employees in establishments employing not more than two persons in towns of less than 2,500 population, which towns are not part of a larger trade area; nor to registered pharmacists or other professional persons employed in their profession; nor to employees in a managerial or executive capacity who now receive more than $35 per week; nor to employees on emergency maintenance and repair work; nor to very special cases where restrictions of hours of highly skilled workers on continuous processes would unavoidably reduce production, but in any such special case at least time and one-third shall be paid for hours worked in excess of the maximum. Population for the purposes of this agreement shall be determined by reference to the 1930 federal census.

"5. Not to pay any of the classes of employees mentioned in paragraph 2 less than $15 per week in any city of over 500,000 population, or in the immediate trade area of such city, nor less than $14.50 per week in any city of between 250,000 and 500,000 population, or in the immediate trade area of such city; nor less than $14 per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city; and in towns of less than 2,500 population to increase all wages by not less than 20 per cent, provided that this shall not require wages in excess of $12 per week.

"6. Not to pay any employee of the classes mentioned in paragraph 3 less than 40 cents per hour unless the hourly rate for the same class of work on July 15, 1929, was less than 40 cents per hour, in which latter case not to pay less than the hourly rate on July 15, 1929, and in no event less than 30 cents per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piece work performance.

"7. Not to reduce the compensation for employment now in excess of the minimum wages hereby agreed to (notwithstanding that the hours worked in such employment may be hereby reduced) and to increase the pay for such employment by an equitable readjustment of all pay schedules.

"8. Not to use any subterfuge to frustrate the spirit and intent of this agreement which is, among other things, to increase employment by a universal covenant, to remove obstructions to commerce, and to shorten hours and to raise wages for the shorter week to a living basis.

"9. Not to increase the price of any merchandise sold after the date hereof over the price on July 1, 1933, by more than is made necessary by actual increases in production, replacement, or invoice costs of merchandise since July 1, 1933, or by taxes or other costs resulting from action taken

pursuant to the agricultural adjustment act, and, in setting such price increases, to give full weight to probable increases in sales volume and to refrain from taking profiteering advantage of the consuming public.

"10. To support and patronize establishments which also have signed this agreement and are listed as members of N. R. A. (National Recovery Administration).

"11. To co-operate to the fullest extent in having a code of fair competition submitted by his industry at the earliest possible date and in any event before Sept. 1, 1933.

"12. Where, before June 16, 1933, the undersigned had contracted to purchase goods at a fixed price for delivery during the period of this agreement the undersigned will make an appropriate adjustment of said fixed price to meet any increase in cost caused by the seller having signed this President's re-employment agreement or having become bound by any code of fair competition approved by the President.

"13. This agreement shall cease upon approval by the President of a code to which the undersigned is subject, or, if the N. R. A. so elects, upon submission of a code to which the undersigned is subject and substitution of any of its provisions for any of the terms of this agreement.

"14. It is agreed that any person who wishes to do his part in the President's re-employment drive by signing this agreement, but who asserts that some particular provision hereof, because of peculiar circumstances, will create great and unavoidable hardship, may obtain the benefits hereof by signing this agreement and putting it into effect and then, in a petition approved by a representative trade association of his industry or other representative organization designated by N. R. A., may apply for a stay of such provision pending a summary investigation by N. R. A. if he agrees in such application to abide by the decision of such investigation. This agreement is entered into pursuant to section four [A] of the national industrial recovery act, subject to all the terms and conditions required by sections 7 [A] and 10 [B] of that act."

Spaces are then provided for the name of the signer, his official position, the name of his company, type of industry or business, and the number of employees hired.

ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

July 29, 1933.

National Industrial Recovery Act

Bulletin No. 6

Blanket Code for All Industries

As indicated in our bulletin of July 26th, Ray Wantz, President of the Rockford Fibre Container Company and Vice-President of the Illinois Manufacturers' Association, and the signer spent several days in Washington this week with the purpose of securing information regarding the construction of various provisions of the "President's Re-Employment Agreement." While there we met in conference with executives of many other state and national associations under the auspices of the National Industrial Council, (an organization comprising the executives of thirty-eight state manufacturers associations and meeting under auspices of National Association of Manufacturers). General Hugh S. Johnson and his associate, General Thomas S. Hammond, addressed the conference. The terms of the President's Blanket Code were thoroughly reviewed.

The conference submitted to the National Recovery Administration a memorandum seeking interpretations of several paragraphs of the Blanket Agreement. The comments of the conference with respect to such paragraphs as well as the recommendations of the conference to the National Recovery Administration are as follows:

PARAGRAPH 7

If paragraph 7 is interpreted to mean that hourly workers must be paid the same weekly pay for reduced number of hours then, the contract in many cases becomes insupportable because:

1. Thousands of industries whose finances have been drained by three years of operating losses cannot possibly finance the greatly increased labor cost pending the certain delay in obtaining higher prices and greater sales. This would ruin and close small institutions, which is not consistent with the purposes of the Act and would further add to unemployment.

2. It penalizes the employer who has dealt generously with labor and who already pays most of his employees much more than the prescribed minimum.

3. It gives an unfair advantage to the low wage employer because instead of bringing his costs up to the level of the higher wage employer, it maintains the present spread between the low wage and high wage employers.

4. Where industries pay bonus in addition to a high guaranteed wage, the bonus rates would be raised due to the reduced number of hours.

We urge that the following interpretation be put on paragraph 7:

"Compensation for employment" refers to compensation per hour wherever hourly rates are mentioned, and compensation per week where weekly rates are mentioned.

In case the application of the contract reduces the total weekly earnings the rate of pay should be increased by an equitable readjustment of pay.

EXCEPTIONS TO PARAGRAPH 12

Provided that Article 12 shall not be interpreted as applying to the purchase of raw materials or semi-finished materials to be used in the manufacture of goods, and/or goods, sold in either the export or domestic markets under fixed price contracts, which were in existence prior to August 1, 1933, if the purchaser under such contracts refuses to make appropriate adjustment.

PARAGRAPH 14

As to Paragraph 14 of the proposed agreement, it is our opinion that industry cannot subscribe to the language suggested without qualification. By agreeing to the paragraph, the employer is accepting the language of Section 7 (a) of the Act and Section 10 (b). It is our opinion that in accepting Section 7 (a), the employer should condition his signature upon the acceptance by the Administration of language which will clearly express his Constitutional rights to deal with his employees in such form as is mutually agreeable to employer and employee.

As to Section 10 (b), it is to be noted that while the acceptance of this section might be appropriate when proceeding under other sections of the Recovery Act, it is entirely inappropriate when proceeding under Section 4 (a) which contemplates a bi-lateral contract between the employer and the Government. To write into any contract that it may be modified at will by one party without the consent of the other deprives the document of its character as a voluntary contract. We, therefore, believe that Paragraph 14 should be interpreted in such a way that neither party may modify the terms of the agreement without the consent of the other.

The provision in Paragraph 14 that the employer may indicate his inability to operate under certain provisions of the agreement does not provide him with sufficient protection to justify his signing the agreement in its present form. This must be interpreted so as to permit him to file his exceptions and to operate under the agreement as modified by such exceptions provided they are acceptable to the National Recovery Administration. He cannot reasonably be expected to agree in advance that if his exceptions are not acceptable he will nevertheless continue to operate under the agreement without such exceptions.

Up to 1:25 this a.m., the time this bulletin is being printed, we have not received a decision from the N.R.A. upon our recommendations. In event we are advised by the N.R.A. that any or all of our recommendations have been adopted, we will immediately transmit such information to our members. In the interim, on account of the fact that we are receiving many inquiries from our members regarding the legal construction of various provisions of the "President's Re-Employment Agreement" and on account of the further fact that copies of said agreement are now being delivered to our members, we are submitting herewith an opinion from our General Counsel, Fyffe and Clarke. We recommend that in the interim, (i.e., pending further information from N.R.A.) that members who elect to sign the "President's Re-Employment Agreement," but who conclude that they cannot, without vital injury to their business and to their employees, subscribe to some of the paragraphs of said agreement specifically referred to above in the memorandum prepared by the Washington conference, strike out those particular paragraphs and return the agreement. Of course, each member of the Association must determine its own policy with reference to its action on the "President's Re-Employment Agreement."

We also <u>again</u> recommend that members who may elect to sign the "President's Re-Employment Agreement" insert at the end of Paragraph 14 the following clause (see our bulletin of July 26th):

> "Provided, the provisions of said Section 7 (a) shall not be construed to impair any Constitutional rights of the undersigned."

As we have indicated in our previous bulletins upon the subject of the National Industrial Recovery Act, the Illinois Manufacturers' Association is in entire sympathy with what we understand to be the major objectives of the Act, namely, stimulation of employment and increased purchasing power. We know that our members wish to cooperate with the National Administration in every appropriate way in accomplishing these important objectives. We also recognize, on the basis of information received from a large number of members, that the enforcement or rigid construction of some of the paragraphs specifically referred to above of the "President's Re-Employment Agreement" would impose vital hardships upon many employers and their employees and thereby seriously impair their contribution to the success of the recovery program.

JAMES L. DONNELLY,
Executive Vice-President.

FYFFE & CLARKE
ATTORNEYS AT LAW
120 SOUTH LASALLE STREET
CHICAGO

Mr. James L. Donnelly, Executive Vice-President,
Illinois Manufacturers' Association,
Chicago, Illinois.

July 28, 1933.

Dear Sir:—

You have asked that we give you our opinion as to the meaning of certain provisions of the "President's Re-employment Agreement" announced July 20, 1933, when entered into by a manufacturing concern.

1. Under paragraph 1, the manufacturer would agree "not to employ any person under 16 years of age," subject to the exception there stated.

2. Under paragraph 2, the manufacturer would agree not to work any accounting, clerical, office, service, or sales employes (except outside salesmen) "for more than 40 hours in any one week."

3. Under paragraph 3, the manufacturer would agree not to employ any factory or mechanical worker or artisan more than 35 hours in any one week and not more than 8 hours in any one day,—but with the right to work a maximum week of 40 hours for any 6 weeks during the effective period of the Agreement.

4. Under paragraph 4, it is provided that the maximum hour provisions of paragraphs 2 and 3 shall not apply to employes "in a managerial or executive capacity who now receive more than $35 per week; nor to employes on emergency maintenance and repair work; nor to very special cases where restrictions of hours of highly skilled workers on continuous processes would unavoidably reduce production",—but that in case the hours provided in paragraphs 2 and 3 are exceeded on account of such highly skilled workers on continuous processes, at least time and one-third shall be paid for such excess.

5. Under paragraph 5, the employer would agree to minimum wages for employes covered by paragraph 2 of the following amounts:—

$15 per week in cities over 500,000 population or in the immediate trade area of such cities;

$14.50 per week in cities between 250,000 and 500,000 population, or in the immediate trade area of such cities;

$14 per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city.

In the case of towns less than 2,500 population, the employer would agree "to increase all wages by not less than 20 per cent, provided that this shall not require wages in excess of $12 per week."

6. Under paragraph 6, the employer would agree to minimum wages for employes covered in paragraph 3 of the Agreement of not less than "40c per hour unless the hourly rate for the same class of work on July 15, 1929, was less than 40c per hour, in which latter case not to pay less than the hourly rate on July 15, 1929, and in no event less than 30c per hour." Under this paragraph it would be "agreed that this paragraph establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piece work performance."

7. Under paragraph 7, the manufacturer would agree "not to reduce the compensation for employment now in excess of the minimum wages hereby agreed to (notwithstanding that the hours worked in such employment may be hereby reduced) and to increase the pay for such employment by an equitably readjustment of all pay schedules."

In our opinion this paragraph means an agreement to pay all employes who have been receiving more than the minimum wages agreed to at least as much per day or week as they have been receiving, even though their hours of work are reduced,—and, in addition, to increase the pay of those receiving more than the minimums agreed to so as to maintain a spread between minimum pay workers and others more highly paid by an "equitable readjustment of all pay schedules."

For example: If a factory worker has been working 54 hours per week at 50c per hour and has thus been receiving $27 per week, he will continue to receive at least $27 per week when he is placed on a 35 hour per week basis—and, in addition, an upward adjustment of this $27 per week wage will be made to maintain a spread between such an employe and a minimum wage employe whose wages have been increased by the operation of these minimum wage provisions of the Agreement. In other words, such a factory worker, in place of receiving 50c per hour, will receive 77c—plus—, per hour.

8. Paragraph 8 is designed to prevent any mode of avoidance of the spirit and intent of the Agreement.

9. Paragraph 9 is an agreement "not to increase the price of any merchandise sold after the date hereof over the price on July 1, 1933, by more than is made necessary by actual increases in production, replacement, or invoice costs of merchandise, or by taxes or other costs resulting from action taken pursuant to the agricultural adjustment act, since July 1, 1933, and, in setting such price increases, to give full weight to probable increases in sales volume and to refrain from taking profiteering advantage of the consuming public."

This is an agreement not to increase the sale price of the manufacturers' product over his July 1, 1933 price, by more than is made necessary by the "actual increases" in costs indicated.

10. Paragraph 10 would provide that the manufacturer agrees to support and patronize establishments which have signed similar agreements; but it is apparently not an agreement to support and patronize such establishments exclusively.

11. Under this paragraph, the manufacturer would agree "to cooperate to the fullest extent in having a code of fair competition submitted by his industry at the earliest possible date and in any event before September 1, 1933."

12. Paragraph 12 provides that in case the manufacturer contracted before June 16, 1933, to purchase goods at a fixed price for delivery during the period of the "President's Re-employment Agreement", the manufacturer (the buyer) "will make an appropriate adjustment of said fixed price to meet any increase in cost caused by the seller having signed this President's Re-employment Agreement, or having become bound by any code of fair competition approved by the President." It is to be noted that this only applies to contracts to purchase goods entered into before June 16, 1933. It means an agreement, in the case of such contracts, definitely to adjust the price named in the purchase contracts to meet any increases in cost caused to the seller either by—(1) the seller having become bound by any code of fair competition approved by the President, or, (2) the seller having signed this President's Re-employment Agreement.

For example: As we understand this provision, it would operate as follows:—

Assume "A" to be a manufacturer of a completed product; "B" to be a manufacturer of some element that goes into the completed product, and "C" to be a producer of raw materials that go into this element.

Assume that prior to June 16, 1933, "A" has contracted to purchase the element from "B" at a fixed price, and "B" has contracted to purchase the raw materials from "C" at a fixed price.

Assume that delivery in each case is to be made during a period while "A", "B", and "C" are, each of them, subject to a "President's Re-employment Agreement" or during a period while "B" and "C" are subject to a code of fair competition approved by the President.

By entering into a "President's Re-employment Agreement", "A" would agree, in effect, to increase the fixed price named in his contract with "B" sufficiently to cover all the costs to "B" and "C" caused by the "President's Re-employment Agreement" or the codes of fair competition to which "B" and "C" may be subject.

13. Paragraph 13 provides that the Agreement shall cease upon approval by the President of a code to which the manufacturer signing the Agreement is subject, or, if the National Recovery Administration so elects, the Agreement shall cease upon submission of a code to which the manufacturer signing the Agreement is subject, and the substitution of any of the provisions of that code for any of the terms of the Agreement.

14. Paragraph 14 is to the effect that after entering into a "President's Re-employment Agreement", the one entering into it may in a petition approved by a representative trade association of his industry, or other representative organization designated by the National Recovery Administration, "apply for a stay" of any of the provisions of the "President's Re-employment Agreement" into which he has entered, pending a summary investigation by the National Recovery Administration of his claim that "because of peculiar circumstances" such provisions will create "great and unavoidable hardships", —but such an application must contain an agreement to abide by the decision reached by the National Recovery Administration in such an investigation.

By paragraph 14, the manufacturer entering into the "President's Re-employment Agreement" would agree to the terms of Section 7-a of the National Recovery Act.

As we have heretofore advised you, it appears to us that if one is asked to agree to comply with the provisions of Section 7-a of the National Industrial Recovery Act, it is only reasonable that he have in his agreement clauses with respect to the construction and meaning of those provisions guaranteeing to him that his agreement in that respect will be so construed as to preserve his Constitutional rights with regard to the relations between employer and employe, and so that he cannot be considered to have waived these Constitutional rights.

This may be accomplished by inserting in the "President's Re-employment Agreement" form, at the end of paragraph 14, the words:—

"Provided, the provisions of said Section 7—(a) shall not be construed to impair any Constitutional rights of the undersigned."

The Act requires that any Code or Agreement approved by the President must contain the provisions required by Section 7—(a) and 10—(b) of the Act. These are the only provisions required by the Act to be included in such a Code or Agreement.

If a manufacturer desires to subscribe to a "President's Re-Employment Agreement" but should conclude that he cannot subscribe to an Agreement containing, for example, the provisions of paragraph 7, or paragraph 9, or paragraph 12, of the "President's Re-Employment Agreement" form,—it would seem to us proper for him to strike out the paragraphs which he cannot subscribe to and subscribe to the Agreement without them.

Whether any addition or modification of the form of "President's Re-Employment Agreement" submitted to business concerns by the Administration will be accepted, we are not informed.

Yours very truly,

(Signed) FYFFE & CLARKE.

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

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July 29, 1933

National Industrial Recovery Act

Bulletin No. 6 A

Blanket Code for All Industries

AT 2:00 O'CLOCK this morning, we mailed to our members Bulletin No. 6 relative to the above subject. With that bulletin we submitted an opinion from our General Counsel, Fyffe & Clarke, construing the various paragraphs of the "President's Re-Employment Agreement." We also stated that we had requested the National Recovery Administration for a modification of certain of said paragraphs and that as soon as such ruling was received it would be transmitted to our members. Since bulletin No. 6 was mailed, the National Recovery Administration has published official interpretations of certain paragraphs of the "President's Re-Employment Agreement." The text of said interpretations is subjoined. We also submit herewith an opinion from our General Counsel supplementing their opinion as embodied in our circular issued earlier today (Bulletin No. 6) and construing certain paragraphs of the interpretations as issued by the National Recovery Administration.

We again recommend to our members that in considering their policy with reference to the "President's Re-Employment Agreement" they consider the procedure suggested by us on page 2 of bulletin No. 6 as modified by the recommendations of our General Counsel in the supplementary opinion submitted herewith.

Please note particularly that this bulletin (No. 6 A) is supplementary to bulletin No. 6. These bulletins should be carefully considered together by our members in formulating their program.

We shall, upon receipt of inquiries from our members, undertake to answer any questions which are not covered by these bulletins.

JAMES L. DONNELLY,
Executive Vice-President

Interpretation by National Recovery Act Administration of Certain Paragraphs of "President's Re-Employment Agreement"

The text of the official interpretation of the various sections of "President's Re-Employment Agreement," as published in the press, July 29, is as follows:

INTERPRETATION OF PARAGRAPH 7

The paragraph and the interpretations follow in order:

"(7) Not to reduce the compensation for employment now in excess of the minimum wages hereby agreed to (notwithstanding that the hours worked in such employment may be hereby reduced) and to increase the pay for such employment by an equitable readjustment of all pay schedules."

"Paragraph 7 means, first, that compensation of employes above the minimum wage group (whether now fixed by the hour, day, week or otherwise) shall not be reduced, either to compensate the employer for increases that he may be required to make in the minimum wage group in order to comply with the agreement, or to turn this re-employment agreement into a mere share-the-work movement without a resulting increase of total purchasing power. This first provision of paragraph 7 is a general statement of what shall not be done.

"The rest of paragraph 7 is a particular statement of what shall be done, which is that rates of pay for employes above the minimum wage group shall be increased by 'equitable readjustments.' No hard and fast rule can be laid down for such readjustments, because the variations in rates of pay and hours of work would make the application of any formula unjust in thousands of cases.

Present Examples

"We present, however, the following examples of the need for and methods of such readjustments:

"Example 1. Employes now working forty hours per week in factories. When hours are reduced to thirty-five, the present rate per hour if increased one-seventh would provide the same compensation for a normal week's work as before.

"Example 2. Employes now working sixty hours per week in factories. When hours are reduced to thirty-five, a rate per hour if increased one-seventh might be insufficient to provide proper compensation. But, to increase the rate by five-sevenths, in order to provide the same compensation for thirty-five hours as previously earned in sixty, might impose an inequitable burden on the employer.

"The sixty-hour week might have been in effect because of a rush of business, although a forty-hour week might have been normal practice at the same hourly wage. Seasonal or temporary increases in hours now in effect, or recent increases in wages, are proper factors to be taken into consideration in making equitable readjustments.

"The policy governing the readjustment of wages of all employes in what may be termed the higher wage groups requires, not a fixed rule, but equitable readjustment in view of long standing differentials in pay schedules; with due regard for the fact that payrolls are being heavily increased, and that employes will receive benefits from shorter hours, from the re-employment of other workers, and from stabilized employment which may increase their yearly earnings.

To Watch Employers

"The foregoing examples indicate the necessity of dealing with this problem of 'equitable readjustment' of the higher rates of pay, on the basis of consideration of the varying circumstances and conditions of the thousands of enterprises and employments involved.

"Any attempt to define a national standard would be productive of widespread injustice.

"The national recovery administration will, through local agencies, observe carefully the manner in which employers comply with their agreement to make 'equitable readjustments,' and will take from time to time and announce from Washington such action as may be necessary to correct clear cases of unfairness and to aid conscientious employers in carrying out in good faith the terms of the agreement.

"When an employer signs an agreement and certifies his compliance and also joins in the submission of a code of fair competition before September 1, 1933, his determination of what are 'equitable readjustments' should be accepted, at least prior to September 1, as a prima facie compliance with his agreement, pending action by N. R. A. upon the code submitted, or any other action by N. R. A. taken to insure proper interpretations or applications of agreements.

"This will afford N. R. A. an opportunity to survey the general results of the re-employment program and to iron out difficulties and misunderstandings over agreements that are of a substantial character."

Interpretation Section 14

Interpretations of section fourteen:

"(14) It is agreed that any person who wishes to do his part in the President's re-employment

drive by signing this agreement, but who asserts that some particular provision hereof, because of peculiar circumstances, will create great and unavoidable hardship, may obtain the benefits hereof by signing this agreement and putting it into effect and then, in a petition approved by a representative trade association of his industry, or other representative organization designated by N. R. A., may apply for a stay of such provision pending a summary investigation by N. R. A., if he agrees in such application to abide by the decision of such investigation.

"This agreement is entered into pursuant to section 4(a) of the national industrial recovery act and subject to all the terms and conditions required by sections 7(a) and 10(b) of that act."

"A person who believes that some particular provision in the agreement, because of peculiar circumstances, will create great and unavoidable hardship, should prepare a petition to N. R. A. asking for a stay of this provision as to him.

"He should then submit this petition to the trade association of his industry, or if there is none, to the local chamber of commerce or similar representative organization designated by N. R. A., for its approval.

"The written approval of the trade association, or such other organization will be accepted by N. R. A. as the basis for a temporary stay, without further investigation, pending decision by N. R. A.

"The petition must contain a promise to abide by N. R. A.'s decision, so that if N. R. A. decides against the petitioner, he must give effect to the provision which was stayed, from the date of the decision of N. R. A.

"The petition and approval of the trade association or other organization, as prescribed above, should be forwarded to N. R. A. in Washington; and the employer's signed copy of the President's re-employment agreement should be sent to the district office of the Department of Commerce. After complying with these requirements, the employer will be entitled to receive and display the blue eagle by delivering his certificate of compliance to his postoffice.

"Paragraph 14 is not intended to provide for group exceptions, but only to meet cases of individual hardship.

Interpretation No. 3

"Interpretation No. 3 (concerning date of compliance).

"It is expected that all employers desiring to cooperate with the President's recovery program will sign the agreements promptly and mail them in. It is recognized, however, that it will be physically impossible in many instances to adjust employment conditions and to hire the necessary additional personnel in order to comply with the agreement on August 1.

"For that reason, provision has been made for issuing the blue eagle only upon the filing of a certificate of compliance. It should be possible in most cases to make the necessary adjustments and file a certificate of compliance within the first week of August, and such action, taken as promptly as possible, will be regarded as carrying out the agreement in good faith."

The next interpretation covered Section 13, which follows:

"(13) This agreement shall cease upon approval by the President of a code to which the undersigned is subject; or, if the N. R. A. so elects, upon submission of a code to which the undersigned is subject and substitution of any of its provisions for any of the terms of this agreement.

"All employers are expected to sign the agreement, whether codes have been submitted to the N. R. A. or not (unless such codes have already been approved); but after the President has approved a code, or after N. R. A. has approved of the substitution of the provisions of a code for agreements in the trade or industry covered, conformity with the code provisions by an employer will be regarded as compliance with his individual agreement."

Interpretation Section 9

Interpretation of section number nine:

"(9) Not to increase the price of any merchandise sold after the date hereof over the price on July 1, 1933, by more than is necessary by actual increases in production, replacement or invoice costs of merchandise, or by taxes or other costs resulting from action taken pursuant to the agricultural adjustment act, since July 1, 1933, and, in setting such price increases, to give full weight to probable increases in sales volume and to refrain from taking profiteering advantage of the consuming public."

"Where the July 1, 1933, price was a distress price, the employer signing the agreement may take his cost price on that date as the base for such increase in selling price as is permitted by paragraph 9."

Interpretation No. 6 (concerning employments covered by the agreement):

"The following groups of employment are not intended to be covered by the President's re-employment agreement:

"1. Professional occupations.

"2. Employes of federal, state and local governments and other public institutions and agencies.

"3. Agricultural labor.

"4. Domestic servants.

"5. Persons buying goods and selling them independently or persons selling solely on commission, provided, however, that persons regularly employed to sell on commission, with a base salary or guaranteed compensation, come within the requirements of the agreement."

FYFFE & CLARKE
ATTORNEYS AT LAW
120 SOUTH LASALLE STREET
CHICAGO

July 29, 1933.

Mr. James L. Donnelly, Executive Vice-President,
Illinois Manufacturers' Association,
Chicago, Illinois.

Dear Sir:—

You have asked that we supplement our opinion to you of July 28, 1933, concerning the "President's Re-employment Agreement" in the light of the "interpretations" by the National Recovery Administration, published July 29, 1933.

The principal purpose of these "interpretations" appears to be to advise employers that the Administration does not intend to adopt a literal interpretation of the provisions of paragraph 7 and paragraph 9 of the "President's Re-employment Agreement" form, but rather, expects that those executing "Agreements" will carry out the provisions of these two paragraphs only to the extent that is practicable.

In the light of these "interpretations" it would appear that the "President's Re-employment Agreement" would be acceptable to the Administration if there was inserted at the beginning of paragraph 7, and at the beginning of paragraph 9, of the "Agreement," the words:—

"In so far as practicable,"

Such insertions in paragraphs 7 and 9 of the "Agreement" may make it possible for some employers to execute the "Agreement" without striking out paragraphs 7 and 9, who otherwise could not execute the "Agreement" without striking out one or both of these paragraphs.

We do not find in the "interpretations" published, any occasion for further supplementing our opinion to you of July 28th.

Yours very truly,

(Signed) FYFFE & CLARKE.

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

August 26, 1933

National Industrial Recovery Act

Bulletin No. 7

Time for Filing Capital Stock Statements Postponed

Under an order issued by the Commissioner of Internal Revenue on August 24th, the time for filing all returns for the fiscal year ended June 30th, 1933, with respect to the capital stock tax imposed by the National Industrial Recovery Act was extended to September 29th. See our bulletin, entitled "Taxing Provisions of the National Industrial Recovery Act", dated July 12th, for details regarding the various forms of taxes imposed by the National Industrial Recovery Act.

INDUSTRIAL RELATIONS CONFERENCE

On Monday and Tuesday, August 21st and 22nd, one hundred and twenty-five representatives of leading industrial and trade associations from all portions of the United States met in conference in Chicago. The meeting was arranged by the American Open Shop Conference, the National Metal Trades Association and the Illinois Manufacturers' Association. The primary purpose of this conference was to co-ordinate policies and activities of industrial and trade associations in connection with the industrial relations aspects of the National Recovery Act. The conference went on record as vigorously defending the right of industry to incorporate in any codes of fair competition, which may be filed with the National Recovery Administration, provisions which are intended to maintain the constitutional rights of the employer and the employe with reference to employment relations. It was understood that each organization represented would recommend to their constituent members that they continue to make a determined effort to have such saving clauses incorporated in any code of fair competition which their particular trade group may file. (See resolution No. 1 subjoined for phraseology of said provision. You will note this phraseology is substantially the same as that in the provisions recommended on page 2 of our National Industrial Recovery Act bulletin No. 4, dated July 17th.) Accordingly we again earnestly recommend to our members who may elect to file codes of fair competition that they insist that their particular trade group incorporate in such code the provisions in resolution No. 1 subjoined, or provisions incorporated on page 2 of our bulletin No. 4, just

referred to. The success which a particular trade group will enjoy in securing the adoption of said provisions will be measured by the vigor and determination with which individuals who may represent their particular trade group in hearings before National Recovery Administration at Washington will defend the inclusion of said provisions.

SUPPORT PLEDGED TO AUTOMOTIVE INDUSTRY

The conference pledged support to the automotive industry in their efforts to have provisions of the character referred to above incorporated in their code of fair competition now under consideration at Washington. Contact was made with the individuals who were representing the automotive industry in connection with current hearings before the National Recovery Administration. They were pledged vigorous and united support of the industrial organizations throughout the country in their efforts to safeguard the constitutional rights of their industry relative to employment relations. See resolution No. 2 subjoined.

LABOR POLICY OF PUBLIC WORKS ADMINISTRATION

The conference went on record opposing the policy of the Federal Emergency Administration of Public Works in discriminating against unorganized workers who are not members of any trade union. See resolution No. 3 subjoined. The continued conformity to this discriminatory labor policy by the Federal Public Works Administration would discriminate against non-union workers, materially strengthen the organized labor movement in Illinois and substantially raise taxes by increasing the cost of public works.

Our members are requested to communicate their views on this item to Hon. Harold L. Ickes, Secretary, Department of Interior, Washington, D. C.

MEETING WITH INDUSTRIAL ADVISORY BOARD OF N.R.A.

The Chicago conference appointed a committee of ten to confer with the members of the Industrial Advisory Board of N.R.A. in Washington. That Board is made up of thirteen prominent executives who have been appointed by the Federal Administration to represent the interests of the employer on questions of industrial policy involved in the administration of the National Industrial Recovery Act. The committee appointed at the Chicago conference consists of five executives of industrial associations and five manufacturing executives. This committee (of which Ray Wantz, President of the Rockford Fibre Container Company and Vice-President of the Illinois Manufacturers' Association, and the signer are members), will meet with the Industrial Board at Washington during the coming week. The purpose of the meeting is to acquaint the members of the Industrial Advisory Board with the problems of industry as developed at the Chicago conference and also to cooperate with that body in their efforts to adequately represent the views of industry before the National Industrial Recovery Administration.

The signer will be located at the Mayflower Hotel, Washington, D. C., during the coming week and will, while there, be glad to cooperate with any of our members in connection with the National Industrial Recovery Act.

JAMES L. DONNELLY,
Executive Vice-President.

Resolutions Adopted at Industrial Conference
Chicago, August 22, 1933

No. 1

RESOLVED, That all National, State and Local Manufacturers' and Employers' Associations repeatedly and forcefully urge their members to insist on the insertion in the Codes of Fair Competition submitted to the National Recovery Administration by their respective industries of the following provisions, to be inserted in said Codes immediately following the Labor provisions of Section 7A of the National Industrial Recovery Act:

"Under the foregoing provisions the employers in the industry may select, retain and advance employees on the basis of individual merit and without regard to their affiliation or non-affiliation with any labor or other organization.

"It is expressly understood that nothing in this section of this code constitutes a waiver or surrender of any constitutional rights of either the employer or the employee.

"Nothing in this code shall authorize any change in the maximum hours of labor, minimum rates of pay or other conditions of employment, provided in this code, without first referring any such change to the industry to which the code applies for the approval of that industry."

No. 2

RESOLVED, That national allied group of representatives of employers' associations assembled from all parts of the United States heartily approves position of members of National Automobile Chamber of Commerce in insisting upon approval of language in code for automobile industry which will make it clear that rights of employers and employes to agree with respect to employment relations irrespective of affiliation or non-affiliation with labor organizations is fully protected. Be it further

RESOLVED, That we earnestly urge members of National Automobile Chamber of Commerce to continue to insist upon inclusion of said clauses in their code of fair competition and that we pledge fullest co-operation in their commendable effort to preserve constitutional rights of employer and employe with reference to their employment relations.

No. 3

Statement on Federal Public Works Policy

The Federal Emergency Administration of Public Works, Washington, D. C., in stating its labor policy in circular No. 1, of July 31, 1933, page 4, Article II, Section I says:

> "Highly skilled or organized labor . . . shall be secured in the customary ways through recognized *trade union locals.*"

The Labor Policy as set forth should be vigorously opposed for the following reasons:

First: It is based on misconception, since in a majority of communities it is not "customary" for "highly skilled labor" to be secured "through recognized trade union locals."

Second: The policy so set forth is unnecessary since in a majority of communities there is an adequate supply of highly skilled building workers who are not members of any trade union.

Third: It would require all contractors wishing to bid, or securing any of the public works contracts, to employ only union members for skilled jobs.

Fourth: It would consequently force many contractors to dismiss present workers, and refuse to employ qualified workers who live in the particular community, who do not choose or are prohibited from belonging to a union by the union's rules, and it would upset the whole construction industry and labor situation in the greater part of the country.

Fifth: Where open-shop contractors are thus barred from bidding, Federal construction costs, ultimately borne by the public, will increase; primarily because of the output restriction policies which many building trade unions enforce, and because of the racketeering methods which many of the same unions engage in.

Sixth: The labor policy thus declared by the Federal Emergency Administration of Public Works violates sound principles of public policy since it uses funds raised by taxation from all classes to discriminate arbitrarily between different groups of citizens.

Seventh: It violates, moreover, the public policy of Governmental non-discrimination between union and independent workers previously enunciated by President Theodore Roosevelt, by the construction division of the United States Army during President Wilson's administration, and by the present Comptroller General of the United States.

It is therefore urged that every National, State, and Local Industrial Association, both directly and through their members and other contacts, present prompt and vigorous opposition to the Federal Labor policy now in effect, making such protest to the Federal Emergency Administrator, (Secretary of the Interior Ickes) and to Senators and Representatives.

BE IT RESOLVED, by this conference, that they herewith, for the above reasons, place themselves on record against the declared policy of the Federal Emergency Administration, and that these views be personally presented to the Federal Emergency Administrator of Public Works by the special committee heretofore authorized. Be it further

RESOLVED, That the above committee also express to the Federal Administrator our opposition to the arbitrary selection of union wage rates in every community as the rates which must be paid construction workers in every trade without adequate investigation as to whether such wage is in each trade the prevailing wage or whether such wage is an economic wage, with accompanying construction recommendations as to a sound method of determining the rates which should be paid building labor on Federal emergency construction in each community or locality.

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

Washington, D. C.,
September 9, 1933.

National Industrial Recovery Act

Bulletin No. 8

EMPLOYERS' ADVISORY COMMITTEE ON CODES OF FAIR COMPETITION

On August 22nd a large and representative meeting of national, state and local employers' associations was held in Chicago. This meeting was attended by approximately 130 representatives of such associations from New England to California. The constituent membership of the associations represented at said meeting is approximately fifty thousand. (See our bulletin No. 7, of August 28th, for additional information regarding the Chicago meeting).

Pursuant to the action taken at said meeting, the Committee has met in Washington on several occasions to give consideration to a plan for improving presentation of codes of fair competition.

Under date of September 7th this Committee met in Washington with representative industrialists from throughout the country. At this meeting it was concluded advisable to establish representation in Washington for the purpose of assisting and advising employers in connection with their codes of fair competition.

The following Committee was appointed and given the duty of selecting a group, who, by experience, training, past accomlishment and knowledge of the law, would be eminently fitted to give advice and counsel so much needed at the present time:

Paul C. DeWolf, Vice President,
Brown & Sharpe Mfg. Company,
Providence, R. I.

Charles R. Hook, President,
American Rolling Mill Company,
Middletown, Ohio.

Thomas Pangborn, President,
Pangborn Mfg. Company,
Hagerstown, Md.

R. S. Shainwald, President,
Paraffine Company,
San Francisco, California.

George H. Houston, President,
Baldwin Locomotive Works,
Philadelphia, Pa.

Harold C. Smith, President,
Illinois Tool Works,
Chicago, Ill.

Philip Morgan, President,
Morgan Construction Company,
Worcester, Mass.

H. M. Taliaferro, President,
American Seating Company,
Grand Rapids, Michigan.

Ray Wantz, President,
Rockford Fibre Container Co.,
Rockford, Illinois.

At the initial meeting of the above named Committee, which is to be known as the "Employers' Advisory Committee on Codes of Fair Competition," Mr. John L. Lovett was appointed Secretary of the Washington group which will be located in Room 625, Investment Building, 15th & K Streets, N. W., Washington, D. C.

We urge that our member companies confer with this Committee in connection with their codes of fair competition and thereby avail themselves of the machinery which has been set up in their behalf.

We feel that the knowledge of procedure and the advice and counsel which this Committee will be able to render will be of great value to the employers of the country and that our members should suggest to their respective trade associations that they make use of the service of this Committee immediately upon their arrival in Washington.

Additional information regarding the detailed workings of this Committee can be had by addressing its Washington headquarters, or the Illinois Manufacturers Association.

The signer will spend a portion of his time in Washington serving with the group referred to herein.

JAMES L. DONNELLY,
Executive Vice-President.

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

Washington, D. C.
September 9, 1933.

National Industrial Recovery Act

Bulletin No. 9

CODE LABOR PROVISIONS

The Automobile Code, as signed by President Roosevelt, contains the following provision after the mandatory labor clause, Section 7 (a):

> "Without in any way attempting to qualify or modify, by interpretation, the foregoing requirements of the National Industrial Recovery Act, employers in this industry may exercise their right to select, retain or advance employees on the basis of individual merit, without regard to their membership or non-membership in any organization."

Immediately after the approval of the Automobile Code other trade groups quite properly took steps to have a similar provision incorporated in their respective codes. We are informed by many of our members that the inclusion of such provision is being vigorously opposed, particularly by the labor groups connected with the National Recovery Administration. It is entirely clear that the National Recovery Administration cannot justly discriminate between different employers and different trade groups by approving this principle in one case and rejecting it in another.

We urge each member whose particular trade group is now preparing a code to insist on the inclusion and retention of the same or substantially similar language to that we quoted above: We urge members whose particular trade group has already filed a code to insist that the above provision or a substantially similar provision be added to said code.

Employers who fail to stand firm for this principle may eventually find that they have waived a right which may be extremely valuable to them in counteracting the unwarranted efforts of union labor agents to use the National Recovery Act as a license to unionize their plants.

JAMES L. DONNELLY,
Executive Vice-President.

ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

October 14, 1933

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National Industrial Recovery Act

Bulletin No. 10

Suggestions for Maintaining Satisfactory Industrial Relations

Reports from our members throughout the state indicate that organized labor is continuing to make an aggressive effort to unionize Illinois factories. False representations of all kinds, both in meetings as well as in circulars, are being made by labor agents.

In most instances where employers have had labor difficulties, one or more of the following factors existed:

1. The employer did not keep **fully** informed on what was going on in his plant.
2. The employees had a wrong understanding of their rights under the National Recovery Act or were under a misapprehension regarding the policies of their employer.
3. The employer did not fully understand his legal rights under the Labor Section—Section 7A of the National Recovery Act.

With the object of assisting members to avoid labor difficulties, we will re-state herein some of the suggestions which have appeared in previous literature sent out from this office on this subject:

DECIDE DEFINITELY AND FINALLY THAT YOU ARE GOING TO RUN YOUR OWN PLANT,—THAT YOU WILL CONTINUE TO MAINTAIN AN OPEN SHOP. Employers who maintain any illusions regarding the advantages of a partnership with organized labor should read a memorandum recently prepared by this office entitled "What Organized Labor Means to Illinois Industry and the NRA." Copies are available to our members on request.

KEEP **FULLY** INFORMED ON WHAT IS GOING ON IN YOUR PLANT. Several instances have come to our attention where employers believed everything was peaceful and satisfactory in their industry until they were approached by an organized labor agent who wanted to "bargain collectively" for a large proportion of the employes of the plant whose membership in his particular labor union he had secured. It is much simpler to anticipate labor trouble than it is to deal with it after your plant or a portion thereof has been organized.

EXPLAIN THE PURPOSE OF THE NATIONAL RECOVERY ACT TO YOUR KEY MEN AND SOLICIT THEIR COOPERATION IN SEEING THAT LABOR AGENTS DO NOT MISREPRESENT THE ACT TO YOUR EMPLOYES. Labor agents are making all sorts of false representations regarding the labor features of the NRA. They are telling employes that they cannot get the full benefits of the Act unless they join a labor union; that employers cannot advise employes to not join a labor union; that employes cannot be discharged even though they neglect their regular work and engage in unionizing activities during working hours; that employers are required

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to permit union officials or organizers to enter their plant or company premises during working hours to talk to employes; that the NRA authorizes boycotts and sanctions mass picketing and that the Government intended when the NRA was passed that employes should join a labor union. Such statements are all unwarranted.

ASCERTAIN YOUR LEGAL RIGHTS UNDER THE LABOR CLAUSE, — SECTION 7A OF THE RECOVERY ACT. Our General Counsel, Fyffe & Clarke, have prepared detailed legal opinions setting out their views on this question. Copies will be sent to members upon request.

WHERE FEASIBLE DISCUSS THE NRA FRANKLY AND FULLY WITH YOUR EMPLOYES. Most employes who join labor unions do so because of misapprehension or misunderstanding regarding the policies of their employers or because of coercion from labor agents. A cordial relationship and a clear understanding of the mutual interests of employer and employee are highly important at this time for the preservation of harmonious employment conditions.

POSTING PLANT BULLETINS. Many employers have posted bulletins on their bulletin boards setting out briefly the purposes of the NRA and clearing up the misunderstanding which many employes have regarding the relation of organized labor to the NRA. We have several different forms of plant bulletins which are available on request. Whether or not it is desirable to post a bulletin of this character in a plant as well as the type of bulletin which should be posted are questions which must be decided in the light of conditions which obtain in a given industry. In some instances, bulletins may do more harm than good. In others, if properly worded they may be of considerable value.

EMPLOYEE CONTRACTS. Some employers have found individual contracts with employees to be very advantageous in combating unwarranted activities of outside agents. Whether or not an employee contract is desirable depends upon conditions in a given industry. No general rule can be followed. We have several forms of contract in use by various industries which we will send to our members on request.

COMPANY UNIONS. So-called company unions, works councils and other employee representation plans have been adopted with much success by many industries. In several instances, however, such employee representation plan has simply been the ground work for a labor union. The employe group or portions thereof were taken over bodily by organized labor. Just as is true with the use of plant bulletins and employee contracts, no general rule can be followed with reference to company unions. The utility of such plan depends upon the conditions in a particular industry. We have a number of forms of successful company unions or employe representation plans now in effect in Illinois industry which we will send to members on request.

This office is prepared to advise and assist its members on specific questions which arise in connection with their industrial relations problems under the National Recovery Act.

JAMES L. DONNELLY,
Executive Vice-President

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

November 20, 1933

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UNIVERSITY OF ILLINOIS

National Industrial Recovery Act

Bulletin No. 11

Inquiry Relative to Operation of Act

The Board of Directors of the Illinois Manufacturers' Association at its regular monthly meeting for November reviewed the experience of many of our members with the NRA. It was concluded advisable that an inventory be taken of the experience of our members with the National Recovery Act. A committee consisting of three members of the Board was appointed to prepare a memorandum designed to secure accurate information on this subject. The memo so prepared is subjoined.

The facts developed by this inquiry will be used in collective form only. The experience of individual members will not be disclosed without their specific authority. It is obviously not feasible to submit a list of inquiries which will fully develop all pertinent facts in connection with the experience of individual members. Accordingly, the questions included in this memorandum should be regarded as only suggestive of the type of information desired. It is hoped that our members will supplement their answers to these inquiries by supplying additional information under the title "REMARKS" or by accompanying the memorandum with a letter outlining their experience in connection with the NRA as well as their convictions regarding the probable future effect of the NRA upon their business as well as upon their community.

The cooperation of our membership in filling out and returning this memorandum promptly is earnestly requested. The information so secured will not only better position this office to assist individual members in connection with their problems under the NRA, but will be extremely helpful to the Directors in formulating the future policy of the Association with reference to the National Recovery program.

JAMES L. DONNELLY,
Executive Vice-President.

MEMORANDUM REGARDING EXPERIENCE WITH NRA*

1. Are you operating under a Code or the PRA (the Blanket Code)?

   Yes..... No.....

2. What hours did you work before and what hours after conforming to a Code or to the PRA (the Blanket Code)?

   Before..... After.....

3. How many people do you employ now?

   .....

4. Have you received higher prices to compensate for any increased costs due to NRA?

   Yes..... No .....

5. Have any higher prices due to NRA lessened the volume of business secured?

   Yes..... No.....

6. From the time that higher prices—resulting from higher costs caused by the NRA codes—reached the public, has your business and employment increased or decreased?

   Increased..... Decreased .....

7. Has the improvement in business and employment which was quite generally effective during the early summer months continued in your particular business? (Eliminate seasonal considerations.)

   Yes..... No.....

8. Has the NRA disturbed the employer-employee relations in your plant?

   Yes..... No .....

   (If answer is "yes" please give detail in accompanying letter)

9. Do you regard the minimum wage requirements of the NRA as beneficial or harmful to your business?

   .....

10. What is your estimate as to future influence of the NRA and AAA upon your business?

    .....

REMARKS

.....

.....

.....

.....

Name.....

*The National Recovery Act as used in this memo includes Codes of Fair Competition as well as the President's Re-employment Agreement (the Blanket Code).

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

November 20, 1933

National Industrial Recovery Act

Bulletin No. 12

The National Labor Board -- Regional Labor Boards Their Powers and Duties

We have received many inquiries from our members regarding the duties and legal authority of the above boards. We have, accordingly, requested an opinion from our Counsel, Fyffe and Clarke, a copy of which is subjoined. We shall undertake to answer inquiries from our members regarding questions pertaining to the powers and duties of these Labor Boards which are not covered in this opinion.

ADVISORY COMMITTEE ON INDUSTRIAL RELATIONS

With the object of assisting our members who may have occasion to appear before the National Labor Board or the Regional Labor Board, the Board of Directors of the Illinois Manufacturers' Association has authorized the creation of the following committee which will be known as the "Advisory Committee on Industrial Relations":

E. C. Heidrich, Jr., President, Peoria Cordage Company, Peoria,
R. E. Wantz, President, Rockford Fibre Container Company, Rockford,
J. C. Belden, President, Belden Manufacturing Company, Chicago,
E. M. Anderson, Vice-President, American Tag Company, Chicago,
Allen S. Pearl, Secretary-Treasurer, Delta Star Electric Co., Chicago.

This committee will meet at our Chicago offices from time to time as occasion may require with the purpose of discussing with our members their industrial relation problems which may be receiving the attention of the said Labor Boards.

Members who now have or may at some future date have industrial relation problems pending before the National or Regional Labor Boards and who wish to avail themselves of the views of said committee members with reference to the practical aspects of said problems are requested to communicate with this office. We will then undertake to arrange for those members to meet with said committee at a time which will be mutually convenient.

JAMES L. DONNELLY,
Executive Vice-President.

36TH ANNUAL BANQUET - An Outstanding Industrial Event

TUESDAY EVENING DECEMBER 12, 1933

FYFFE & CLARKE
ATTORNEYS AT LAW
CHICAGO

November 15, 1933.

Mr. James L. Donnelly, Executive Vice-President,
Illinois Manufacturers' Association,
Chicago, Illinois.

Dear Sir:—

You have asked that we advise you with respect to the organization, duties and powers of the National Labor Board.

The National Labor Board was created by Executive Order of the President on August 5, 1933, for the purpose of affording disputants in labor controversies a medium through which to settle their differences. That Executive Order gave the National Labor Board authority to establish Regional Labor Boards.

Regional Labor Boards have been created under this authority.

The character of the powers and duties of the National Labor Board and the Regional Labor Boards may best be described by reference to the "General Instructions for Regional Labor Boards" issued by the National Labor Board.

In these Instructions it is stated:—

> "The functions and powers of the Regional Labor Boards shall be as follows:—
>
> 1. To bring about settlements by mediation, conciliation or arbitration of all disputes between employers and employees in the region in which the Board is situated, involving the interpretation and application of the President's Reemployment Agreement and the industrial codes of fair competition or which otherwise affect the national program of economic recovery.
>
> 2. To hear and determine all violations of the labor provisions of the industrial codes of fair competition that are submitted to it, except such violations as, in the opinion of the Regional Board, should be referred to a Compliance Board or a Regional Director of Compliance for consideration, as hereinafter provided for.
>
> 3. To arbitrate all differences which have been jointly submitted to the Board for arbitration."

It is provided in these instructions:—

> "All controversies which, by reason of their scope and nature, are not amenable to local conciliation shall be referred to the National Labor Board.
>
> In the event a Regional Board is unable to bring about an agreement or settlement of any dispute, it shall present the controversy to the National Labor Board for hearing and adjustment.
>
> The National Labor Board reserves the right to review all decisions of the Regional Labor Boards relating to violations of the President's Reemployment Agreement and the codes of fair competition.
>
> In order to insure uniformity of interpretation, all questions of law shall be submitted to the National Labor Board. All inquiries shall be accompanied by a complete statement of the facts out of which the question of law arises."

The National Labor Board and the Regional Labor Boards are created to serve employers and employees who wish to avail themselves of the services of these Boards, in the hearing, mediation, conciliation, or arbitration, of labor disputes.

Those employers or employes who do not wish to avail themselves of the services of these Boards are not compelled by law to do so.

The "General Instructions for Regional Labor Boards" provide in the case of a complaint and notice of hearing:—

> "Should one of the parties fail to appear, the Board shall, nevertheless, conduct the hearing and publish its findings of fact together with its recommendations."

The recommendations of a Regional Labor Board are made to the National Labor Board and any action on account of violation of a President's

Re-employment Agreement or Code of Fair Competition is taken by the National Labor Board.

You have referred to the matter of the "elections" held for the employes in a plant or business house and have asked what is the real nature of such an "election".

The National Industrial Recovery Act provides in Section 7 (a) that each employe shall be free to choose from time to time whether he will bargain with his employer personally or through a representative, and in the case of the latter, to determine from time to time who shall be his representative to bargain with his employer.

The Act does not contemplate that there shall be an election in the sense of a balloting for the choice by a majority or plurality vote of a representative to represent all employes, or to represent any employe for any particular length of time, in dealings with an employer.

The "election" which you refer to can be only a designation by each employe, independently, of whom, if anyone, he wishes for the time being to represent him in dealings with his employer.

You have asked whether such an "election" should be by "secret ballot".

It is inherent in the provisions of Section 7 (a) of the Act that there be no secrecy as between an employe and his employer in the matter of any such election. The employer must be informed as to whom each employe has chosen as his representative.

Under the provisions of Section 7 (a) of the National Industrial Recovery Act each employe is free, from time to time, and at any time, to make a new election as to who shall be his representative and as to whether he will have any representative at all.

In the light of Section 7 (a) of the Act, in no case should an employer deal with any person or organization as the representative of any employe until and unless that employe has clearly communicated to his employer that the person or organization purporting to be the representative of the employe is such in fact.

Yours very truly,
(Signed) FYFFE & CLARKE.

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

December 29, 1933

National Industrial Recovery Act

Bulletin No. 13

Extension of President's Re-Employment Agreement

Display of Blue Eagle After January 1, 1934, Automatically Extends Agreement to April 30.

The President's Re-Employment Agreement became effective on August 1, 1933. By its terms it expires on December 31. On December 20th, however, President Roosevelt issued an Executive Order inviting the employers who had signed the President's Re-Employment Agreement and who are in a trade or industry which is not yet covered by a Code to extend the PRA for four months. The President's order provides that the display of the Blue Eagle by such employer on and after January 1, 1934, will be regarded as an agreement to extend and comply with the terms of the President's Re-Employment Agreement until April 30, 1934.

We submit herewith an opinion from our General Counsel, Fyffe and Clarke, which is intended to answer the inquiries we have received from our members regarding this subject.

JAMES L. DONNELLY,
Executive Vice-President.

(SEE OTHER SIDE)

FYFFE & CLARKE

ATTORNEYS AT LAW

December 29, 1933.

No. 5030

Mr. James L. Donnelly, Executive Vice-President,
Illinois Manufacturers' Association,
Chicago, Illinois.

Dear Sir:—

On December 20, 1933, President Roosevelt issued an executive order which reads in part as follows:—

> "Display of the Blue Eagle on or after January 1, 1934, by an employer whose business is not entirely covered by an approved code will be treated as an acceptance of the extension (until April 30, 1934) of the President's re-employment agreement and a representation that he is complying with it for that part of his business not covered by approved codes."

In other words, if such an employer displays the Blue Eagle after January 1, 1934, he thereby agrees to the extension of the operation of the President's Re-Employment Agreement to April 30, 1934.

It is understood that employers who display the Blue Eagle after January 1, 1934, and who fail to comply with the President's Re-Employment Agreement, thus extended, as to any part of their businesses that have not come under approved Codes of Fair Competition, will be subject to prosecution for unlawful display of the Blue Eagle.

There is no requirement that any employer, whether under the President's Re-Employment Agreement or under an approved Code of Fair Competition, continue to display the Blue Eagle, —unless he is subject to a Code of Fair Competition which provides for display of the Blue Eagle.

Those who have become qualified and continue to be qualified to display the Blue Eagle, may, of course, continue to do so if they choose.

Yours very truly,

(Signed) FYFFE & CLARKE.

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

December 29, 1933

National Industrial Recovery Act

Bulletin No. 14

Changes in Taxes Resulting From Repeal of Eighteenth Amendment

Pursuant to the provisions of section 217(a) of the National Industrial Recovery Act, the President on December 5, 1933 proclaimed December 5, 1933 as the date of the repeal of the eighteenth amendment to the Constitution. Under section 217 of the National Industrial Recovery Act the proclamation of the President affects the application of certain internal revenue taxes as follows:

1. Effective January 1, 1934 the tax on gasoline imposed by section 617(a) of the Revenue Act of 1932, as amended by section 211(a) of the National Industrial Recovery Act, will be at the rate of 1 cent a gallon instead of 1½ cents a gallon.

2. The tax on dividends imposed by section 213 of the National Industrial Recovery Act will not apply to any dividends declared after December 31, 1933.

3. The capital-stock tax imposed by section 215 of the National Industrial Recovery Act will not apply in respect of any year beginning on or after July 1, 1934.

4. The excess-profits tax imposed by section 216 of the National Industrial Recovery Act will not apply to any taxpayer in respect of the calendar year 1934 or any subsequent income-tax taxable year (calendar year or fiscal year).

We shall undertake to answer inquiries from our members regarding this subject.

JAMES L. DONNELLY,
Executive Vice-President.

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ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

January 27, 1934

National Industrial Recovery Act

Bulletin No. 15

The Legal Obligations of the Employer

with reference to

Dealing With Representatives of Their Employes

and

Dealing With the National and Regional Labor Boards

WE SUBMIT herewith an opinion from our General Counsel, Fyffe and Clarke, relating to the above subjects. This opinion (which is in a large degree a resumé of former opinions issued by our General Counsel relative to the Labor Provisions of the NRA—see our NRA Bulletins Nos. 4, 10 and 12) was issued pursuant to our request on December 29, 1933, with the particular object of assisting a group of our members who were involved in a difficult labor controversy. The experience of this office with that group has indicated the desirability of sending this opinion to our entire membership. We recommend that the executive officers of our member firms study this opinion carefully. A clear understanding of your legal rights and obligations under the Labor Provisions of the NRA, as set forth in this opinion, may prove invaluable in the future conduct of your business.

This office is prepared to counsel and advise with the executives of its member firms on their industrial relations problems. Members who may be involved in labor difficulties, including particularly those members who may have hearings pending before the National and Regional Labor Boards, should avail themselves of the experience of the members of our staff in dealing with problems of this character.

JAMES L. DONNELLY,
Executive Vice-President.

FYFFE & CLARKE
ATTORNEYS AT LAW
120 SOUTH LA SALLE STREET
CHICAGO

December 29, 1933.

Mr. James L. Donnelly, Executive Vice-President,
Illinois Manufacturers' Association,
Chicago, Illinois.

Dear Sir:—

You have asked that we summarize the subject-matter of some of our recent opinions to you relating to "collective bargaining."

"Collective Bargaining" Provisions of NRA

The provisions of the National Industrial Recovery Act relating to this subject are contained in Section 7-(a) of the Act, and are as follows:—

> "(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; * * *."

Order Empowering National Labor Board

The National Labor Board has been approved by an executive order of the President, which states the powers and functions of the Board to be as follows:—

> "(a)—To settle by mediation, conciliation or arbitration all controversies between employers and employees which tend to impede the purposes of the national industrial recovery act, provided, however, the board may decline to take cognizance of controversies between employers and employees in any field of trade or industry where a means of settlement provided for by agreement, industrial code, or federal law, has not been invoked.
>
> "(b)—To establish local or regional boards upon which employers and employees shall be equally represented, and to delegate thereto such powers and territorial jurisdiction as the national labor board may determine.
>
> "(c)—To review the determination of the local or regional board where the public interest so requires.
>
> "(d)—To make rules and regulations governing its procedure and the discharge of its functions."

Possibly the clearest mode of approach to a consideration of the question you have regarding Section 7-(a) of the National Industrial Recovery Act is through a consideration of what were rights of each employe prior to the adoption of the Act, and, of which, if any, of these rights have been affected by the adoption of the Act.

Rights of Employee Before NRA was Enacted

Prior to the adoption of the Act, in the absence of a contract in which he had agreed to a restriction of his rights, each employe had the following rights:—

> (1) To quit his employment at any time for any reason.
>
> (2) To bargain directly with his employer.
>
> (3) To bargain with his employer through an agent or representative.
>
> (4) To choose his own representative or agent for the purpose of bargaining with his employer.
>
> (5) To change his mode of bargaining with his employer for any reason, at any time, and as often as he might choose.
>
> (6) To change his representative or agent for any reason, at any time, and as often as he might choose.
>
> (7) To make such an employment contract with his employer as he might choose to make.

How These Rights Were Modified by NRA

Except insofar as the second clause of Section 7-(a) might be held to prohibit a contract by an employe with his employer "to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing",—none of the above rights of an employe

have been taken away by Section 7-(a) of the National Industrial Recovery Act.

This being true, unless he agrees to it, no employe can be lawfully deprived of any of these rights by his employer, by a labor board, by a labor union, or by his fellow employes.

Powers of Labor Boards

Possibly the clearest approach to a consideration of the questions you have regarding the National Labor Board and the Regional Labor Boards is through a consideration of the powers of those boards to enforce their rulings and decisions.

There is no authority in the National Labor Board or in the Regional Labor Boards to compel either an employer or an employe to comply with rulings or decisions of the National Labor Board or of a Regional Labor Board,—unless the employer or employe in question has agreed to the National Labor Board or the Regional Labor Board as an arbitrator of the matter to which the ruling or decision applies.

There is nothing in Section 7-(a) of the National Industrial Recovery Act or in the powers and functions conferred by the President upon the National Labor Board and the Regional Labor Boards that requires an employer or an employe to agree to the proposals or demands of each other, or to the proposals or demands of the National Labor Board or of a Regional Labor Board.

We understand that it is the position of the administrative agencies of the Government that refusal by an employer to give a reasonable hearing to the demands or proposals of persons who are the true representatives of employes of the employer, constitutes "interference, restraint, or coercion" by the employer in violation of Section 7-(a) of the Act.

In our opinion, what constitutes "interference, restraint, or coercion" is a question of fact to be determined in each case, and such a refusal may or may not constitute "interference, restraint, or coercion", depending upon a consideration of all the circumstances of a particular case.

Holding of Elections

We understand that it is the position of the National Labor Board that where an election has been held among employes as to whom they wish to represent them, a majority vote in favor of particular representatives shall bind the minority to the acceptance of those representatives for the purpose of bargaining for them with their employer.

In our opinion, this would constitute an illegal infringement of the right of any employe who did not choose the representatives chosen by the majority and who had not agreed that the decision of the majority should constitute his choice.

Legal Requirements when Dealing with Representatives of Employes and with Labor Boards

You have asked that we give you our opinion as to what an employer should do in certain suggested situations:

1. When persons claiming to be the representatives of employes seek a meeting with the employer to negotiate for the employes they claim to represent, and where failure to meet with them would, in fact, constitute "interference, restraint, or coercion" of employes, the employer should meet with them,—but before proceeding to negotiation, should receive from these persons or from the employes they claim to represent, credentials reasonably sufficient to satisfy the employer as to which employes have authorized these persons to represent them and as to the extent these persons are authorized to represent such employes.

2. In such a case, having been so reasonably satisfied as to the credentials of such persons, the employer should give a reasonable hearing and consideration to their proposals or demands as the proposals or demands of the particular employes who they have been found to truly represent,—but not of any other employes.

3. In such a case, having given a reasonable hearing and a reasonable consideration to such proposals or demands, the employer should determine whether, or to what extent, the proposals or demands will be met by the employer and should communicate his decision to these representatives.

4. When notice is received from a Regional Labor Board or from the National Labor Board that the presence of the employer is requested, or that there is to be a hearing affecting the employer, he should first determine whether he considers it desirable to appear before the Regional Labor Board or the National Labor Board under the particular circumstances, and should act accordingly. In the case of any call or inquiry that may be made by anyone attached to a Regional Labor Board or to the National Labor Board, the

employer, in the same way, should first determine whether it is desirable to respond to such a call or inquiry.

If the employer determines not to do so, he cannot, in our opinion, be compelled to appear or to respond.

5. If an employer determines to appear before a Regional Labor Board or the National Labor Board, he should determine whether he wishes to accept the board as an arbitrator and to be bound by the decision of the board as an arbitrator. If the employer decides that he does not care to accept the Regional Labor Board or the National Labor Board as an arbitrator, he should be careful to make this clearly understood at all times in any appearances before or dealings with the National Labor Board or a Regional Labor Board, or anyone attached to either of them.

6. If an employer determines to appear before or to deal with the National Labor Board, a Regional Labor Board, or anyone attached to either of them, but has determined that he will not accept the National Labor Board or a Regional Labor Board as an arbitrator, he may offer such evidence as he may deem advisable for the purpose of counteracting any charges that may have been made against him of violation of the National Industrial Recovery Act or of a Code or Agreement to which he may be subject.

Penalties

Neither the National Labor Board or a Regional Labor Board has the authority to inflict penalties upon any employer or employe.

They may recommend that an employer be deprived of the Blue Eagle, or that an employer be prosecuted for violation of the Act or of a Code or Agreement to which he is subject.

The penalty of depriving an employer of the Blue Eagle must be imposed through the National Recovery Administration, and any of the penalties named in the Act for violation of the Act or of a Code or Agreement to which the employer may be subject, must be imposed by a court, after proper proceedings and proof of violation—just as in the case of any charge of violation of a penal provision of a law.

Yours very truly,

(Signed) FYFFE & CLARKE.

ILLINOIS MANUFACTURERS' ASSOCIATION
120 SOUTH LA SALLE STREET
CHICAGO

February 6, 1934

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National Industrial Recovery Act

Bulletin No. 16

President's Executive Order of February 1, 1934

relating to

LABOR BOARDS

We submit herewith a copy of the President's Executive Order, dated February 1, 1934. We also submit an opinion from our General Counsel, Fyffe & Clarke, dated February 6, 1934, relating to that order.

This opinion should be read in conjunction with the legal opinion relating to the authority of the Labor Boards which was incorporated in our NRA Bulletin No. 15 (dated January 27th).

That part of the President's Executive Order which refers to the effect of an "election" is construed by Hugh S. Johnson, Administrator for National Recovery, and Donald Richberg in a release issued by them under date of February 4, (Release No. 3125) as follows:

> "2.—This selection of majority representatives does not restrict or qualify in any way the right of minority groups of employees or of individual employees to deal with their employer."

ADVICE ON INDUSTRIAL RELATIONS PROBLEMS

This office is prepared to advise and assist its members on specific questions which may arise in connection with their industrial relations problems under the National Recovery Act.

JAMES L. DONNELLY, Executive Vice-President.

(OVER)

...'S EXECUTIVE ORDER OF FEBRUARY 1, 1934
relating to
LABOR BOARDS

By virtue of the authority vested in me under Title I, of the National Industrial Recovery Act, approved June 16, 1933 (Public No. 67, 73d Cong.), and in order to effectuate the policy of said Act, I, Franklin D. Roosevelt, President of the United States, do hereby provide for and direct the enforcement of certain provisions of Section 7(a) of said Act and the conditions contained therein, as incorporated in, and made a part of, any code of fair competition, or agreement heretofore or hereafter approved or prescribed by me in the following manner:

1. Whenever the National Labor Board shall determine, in such manner as it sees fit, that a substantial number (as defined in the discretion of the Board) of the employees, or of any specific group of employees, of any plant or enterprise or industrial unit of any employer subject to such a code or agreement, have requested the Board to conduct an election to enable them to choose representatives for the purpose of collective bargaining or other mutual aid or protection in the exercise of the rights assured to them in said Section 7(a), the Board shall make the arrangements for and supervise the conduct of an election, under the exclusive control of the Board and under such rules and regulations as the Board shall prescribe. Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relations with their employer.

2. Whenever the National Labor Board shall have determined upon an investigation, or as the result of an election, that the majority of the employees of an employer, or the majority of any specific group of employees, have selected their representatives in accordance with the provisions of said Section 7(a), and shall have certified the names of such representatives to their employer, and thereafter upon complaint or on its own motion, the Board shall determine that such an employer has declined to recognize or to deal with said representatives, or is in any other way refusing to comply with the requirements of said Section 7(a), the Board shall report its determination promptly to the Administrator for Industrial Recovery for appropriate action.

3. The powers and duties herein conferred upon the National Labor Board are in addition to, and not in derogation of, any powers and duties conferred upon such Board by any other executive order.

Approval Recommended
Hugh S. Johnson — Franklin D. Roosevelt

The White House,
February 1, 1934.

FYFFE & CLARKE
ATTORNEYS AT LAW
120 SOUTH LA SALLE STREET
CHICAGO

February 6, 1934.

Mr. James L. Donnelly, Executive Vice-President, Illinois Manufacturers' Association, Chicago, Illinois.

Dear Sir:—

You have sent us copies of the President's Executive Order of February 1, 1934, of the National Recovery Administration Release No. 3078 dated February 1, 1934, and of the National Recovery Administration Release No. 3125 dated February 4, 1934—all having to do with "elections" of representatives of employes to deal with their employers.

You have asked what affect these have upon our opinion to you of December 29, 1933, which was published in your National Industrial Recovery Act Bulletin No. 15 of January 27, 1934.

This Executive Order and these Releases do not change our opinion so given you, in any respect, and we reaffirm that opinion in all particulars.

Yours very truly,
FYFFE & CLARKE.